

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TONY COSTER
Plaintiff,

vs.

HARRELL WATTS, et al.
Defendants.

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C.A. No. 03-25 Erie
District Judge McLaughlin
Magistrate Judge Baxter

ORDER

Plaintiff has filed a motion to reopen this case and Defendants have filed a Response to the motion. The undersigned has reviewed all the filings of this case and concludes that the motion to reopen should be denied for the following reasons.

In his motion to reopen, Plaintiff claims that this Court did not address his claim under the Federal Tort Claims Act. This Court finds that Plaintiff did not ever fairly present such a claim in any of his filings in this case. Even liberally construing the filings, none of Plaintiff's allegations raise an FTCA claim.

Furthermore, even if Plaintiff had raised an FTCA claim, it would have been dismissed as Plaintiff had not fully exhausted his administrative remedies as is required under the statute at the time he filed this action. 28 U.S.C. § 2675(a). Plaintiff filed this action in January of 2003 and his administrative request was not denied until May of 2003.

AND NOW, this 5th day of October, 2005;

IT IS HEREBY ORDERED that Plaintiff's motion to reopen [Document # 49] is
DENIED.

S/ Sean J. McLaughlin
SEAN J. MCLAUGHLIN
UNITED STATES DISTRICT JUDGE